

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JEFFERY J. MARKSMEIER)
)
)
Plaintiff,)
)
) **8:09CV30**
vs.)
)
)
RANDY DALE DAVIE, et al.,)
)
)
Defendants.)

This matter is before the court on the Motion for Protective Order (Doc. 17) filed by defendant, Mark Delmont. Delmont requests that plaintiff's discovery be limited to certain issues, pending the district court's ruling on his motion for summary judgment based on qualified immunity (*see* Doc. 11).

Unless the complaint states a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. *See Mitchell v. Forsyth*, 472 U.S. 511 (1985). Upon review of the file, I find that the motion should be granted and that plaintiff's discovery should, at this time, be limited to the following issues:

- the availability of qualified immunity to the individual defendants within the precise confines of the qualified immunity rule;
- the existence of any policy or custom of the County of Cuming, Nebraska, village of Beemer, Nebraska, and/or the city of Wisner, Nebraska which could result in liability on the part of those municipalities; and
- the availability of sovereign immunity under the Nebraska Political Subdivisions Tort Claims Act.

IT IS SO ORDERED.

DATED July 22, 2009.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**